

AS

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 97-230-C - ORDER NO. 97-814
SEPTEMBER 18, 1997

✓MR

IN RE: Application of Hart Communications for) ORDER
a Certificate of Public Convenience and) APPROVING
Necessity to Provide Alternative Local) CERTIFICATE TO
Exchange Service throughout the State) PROVIDE LOCAL
of South Carolina.) SERVICE

This matter comes before the Public Service Commission of South Carolina ("the Commission") by way of the application of Hart Communications ("Hart" or "the Company"). The Application requests that the Commission grant Hart a Certificate of Public Convenience and Necessity to allow Hart to provide alternative local exchange telecommunications services in the State of South Carolina. The Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1996), and the Regulations of the Commission.

By letter dated June 13, 1997, the Commission's Executive Director instructed Hart to publish, one time, a prepared Notice of Filing and Hearing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing and Hearing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings and to provide notice of the hearing date on this matter. Hart complied with this instruction and provided the Commission with proof of publication of the

Notice of Filing and Hearing. A Petition to Intervene was received from the South Carolina Telephone Coalition ("SCTC").

A hearing was convened on September 4, 1997, at 10:30 a.m. in the Commission's Hearing Room. The Honorable Guy Butler, Chairman, presided. Hart was not represented by counsel. The Commission Staff ("Staff") was represented by Florence P. Belser, Staff Counsel.

Prior to the hearing, Hart and the SCTC executed a Stipulation dated August 21, 1997. The Stipulation was filed with the Commission, and as a result of the Stipulation, SCTC withdrew its intervention in the Docket. The Stipulation was entered as a Hearing Exhibit (Hearing Exhibit No. 1) at the hearing. The Stipulation provides the following:

(1) The SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Hart if the Commission makes the necessary findings to grant the Certificate and if all stipulated conditions are met;

(2) Hart agrees that any Certificate granted by the Commission will authorize Hart to provide service only to customers located in non-rural local exchange company ("LEC") service areas except as otherwise provided;

(3) Hart agrees that it is not requesting the Commission to find whether competition is in the public interest for rural areas;

(4) Hart agrees that it will not provide local service, by its own facilities or otherwise, to any customer in a rural

incumbent LEC's service area, unless and until Hart provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Hart also acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause;

(5) Hart agrees that if, after Hart gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or the Commission institutes a proceeding of its own, then Hart will not provide service to any customer located within the service area in question without prior and further Commission approval;

(6) Hart acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures and guidelines do not conflict with

Federal or State law;

(7) Hart and the SCTC agree that all rights under Federal and State law are reserved to the rural incumbent LECs, and that the stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled; and

(8) Hart agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

This stipulation is consistent with our decision in Order No. 96-494 (Docket No. 96-073-C). It was signed voluntarily by both the SCTC and Hart, was filed with the Commission prior to the hearing in this matter, and was made a part of the record at the hearing. We therefore approve the stipulation.

In support of its Application, Hart presented John Fondren, President and CEO of Hart, to testify. The purpose of Mr. Fondren's testimony was to present evidence on the technical, managerial, and financial abilities of Hart to provide local exchange telecommunications services in South Carolina and to discuss the services which Hart proposes to offer.

DISCUSSION

S.C. Code Ann. §58-9-280 (Supp. 1996) provides that the Commission may grant a certificate to operate as a telephone utility ... to applicants proposing to furnish local telephone service in the service territory of an incumbent LEC.

After full consideration of the applicable law, Hart's Application, and the evidence presented at the hearing, the Commission finds and concludes that the Certificate sought by Hart should be granted. The Commission's determination is based on the following criteria as provided in S.C. Code Ann. §58-9-280 (Supp. 1996) and the evidence presented at the hearing which relates to that criteria:

(1) The Commission finds that Hart possesses the technical, financial, and managerial resources sufficient to provide the services requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 1996). To demonstrate Hart's technical qualifications, Mr. Fondren testified that Hart has been certified to provide local services in Florida and that it has an application pending in Georgia. Mr. Fondren stated that Hart will rely on resale of existing local exchange company services and facilities. Mr. Fondren testified that Hart will contract for repair and other technical services.

Concerning Hart's managerial qualifications, the record reveals that Hart's management team has experience in management, customer service, and operation of business computers and software. Regarding Hart's financial resources, Mr. Fondren testified that Hart has sufficient financial resources to provide local services. No other party offered any evidence in opposition to Mr. Fondren's testimony. Based on the undisputed evidence of the record, the Commission finds that Hart possesses the technical, financial, and managerial resources sufficient to provide the services requested.

(2) The Commission finds that Hart will provide services that will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 1996). Mr. Fondren testified that Hart seeks to provide resold local exchange telecommunications services. Mr. Fondren specifically stated that Hart will comply with all applicable rules, policies, and statutes applicable to the offering of those services and that Hart fully intends to meet the Commission's service standards. Furthermore, Mr. Fondren stated that Hart would make certain changes to its tariff, as suggested by Staff, to bring the tariff into compliance with Commission Rules and Regulations. No party offered any evidence to dispute Mr. Fondren's testimony. Based on the undisputed testimony from Mr. Fondren, the Commission believes, and so finds, that Hart will provide telecommunications services which will meet the service standards of the Commission.

(3) The Commission finds that Hart's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 1996). Mr. Fondren stated that Hart's service offerings would not adversely impact the availability of affordable local exchange service. Mr. Fondren offered that approval of Hart's application will provide competitive local service within South Carolina which will promote competition within the telecommunications industry. Mr. Fondren stated that Hart seeks to provide prepaid local service. Mr. Fondren further stated that Hart targets as its customer base those customers who have had service terminated by

the incumbent LEC for non-payment or for failure to make a sufficient deposit for service. No party offered any evidence that the provision of local exchange service by Hart would adversely affect local rates. Therefore, based on the undisputed evidence of record, the Commission finds that provision of local exchange services by Hart will not adversely impact affordable local exchange service.

(4) The Commission finds that Hart will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 1996). Mr. Fondren testified that Hart will comply with the Commission's universal service requirements. No party disputed Mr. Fondren's testimony. Based on the undisputed evidence of record, the Commission finds that Hart will participate in support of universally available telephone service at affordable rates.

(5) The Commission finds that the provision of local exchange service by Hart "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1996). Mr. Fondren stated that approval of Hart's application would not adversely impact the public interest and offered that approval of Hart to provide services will benefit consumers by ensuring competitive local service within the State of South Carolina. Mr. Fondren's testimony was undisputed as no party offered any evidence that approval of Hart's Application would adversely impact the public interest. Therefore, the Commission finds that approval of Hart's Application for a Certificate to provide local

exchange service "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 1996).

Therefore, based on the findings above, the Commission finds and concludes that the Certificate sought by Hart should be granted.

IT IS THEREFORE ORDERED THAT:

1. The Application of Hart for a Certificate of Public Convenience and Necessity to provide resold local exchange telecommunications services in the State of South Carolina is approved.

2. The Stipulation filed by Hart and the SCTC is approved by this Commission, is binding upon Hart and the SCTC, and shall be implemented as set forth in the Stipulation. We therefore make no findings or conclusions regarding competition in the rural areas of South Carolina. Hart shall conduct its operations in compliance with the Stipulation until further Order of the Commission.

3. Hart shall file, prior to offering local exchange services in South Carolina, a final tariff of its service offerings. The final tariff shall include the modifications and changes as proposed by the Commission Staff and to which Hart agreed.

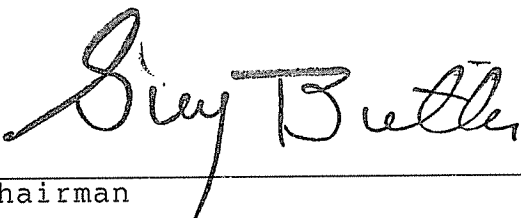
4. Hart shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, and tests and

repairs. In addition, Hart shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours. Hart shall file with the Commission the names, addresses, and telephone numbers of these representatives within thirty (30) days of receipt of this Order. (Attachment A shall be utilized for the provision of this information to the Commission.) Further, Hart shall promptly notify the Commission in writing if the representatives are replaced. Hart is directed to comply with all Commission regulations unless expressly waived by the Commission.

5. Hart shall conduct its business in accordance with Commission decisions and Orders, both past and future, including, but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

DOCKET NO. 97-230-C - ORDER NO. 97-814
SEPTEMBER 18, 1997
ATTACHMENT A

INFORMATION OF THE AUTHORIZED UTILITY REPRESENTATIVES
FOR INTEREXCHANGE, LOCAL AND AOS COMPANIES

PURSUANT TO SOUTH CAROLINA PUBLIC SERVICE COMMISSION
REGULATION 103-612.2.4(b), each utility shall file and
maintain with the Commission the name, title, address, and
telephone number of the persons who should be contacted in
connection with Customer Relations/Complaints.

Company Name/DBA Name

Business Address

City, State, Zip Code

Authorized Utility Representative (Please Print or Type)

Telephone Number

Fax Number

E-Mail Address

This form was completed by

Signature

If you have any questions, contact the Consumer Services
Department at 803-737-5230